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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/557,633	04/25/2000	Leona Dryden Baumgart	ST9-97-054	9263

7590

05/17/2004

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EXAMINER

VU, TUAN A

ART UNIT

PAPER NUMBER

2124

DATE MAILED: 05/17/2004

17

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/557,633

Applicant(s)

BAUMGART ET AL.

Examiner

Tuan A Vu

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is responsive to the Applicant's response filed 3/08/2004.

As indicated in Applicant's response, no claims have been amended. Claims 1-39 are pending in the office action.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-39 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-45 of U.S. Patent No. 6,631,516 (hereinafter '516).

Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following observations.

Following are but a few examples as to how the certain claims from the instant invention and from the above patent are conflicting with each other.

As per instant claims 1, 12, and 23, '516 claims 3, 18, and 33 also disclose, respectively, a method, system and apparatus for: receiving a programming language statements or user's specified commands wherein the statements or commands include attribute information declaring

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symbol reference or definition; translating such programming statements into a object module including the symbol definition or symbol reference and attribute information for those symbol definition or reference; resolving the program object references to external symbol definition in another program.

But the above '516 claims do not explicitly recite binding object modules with the attribute information available for binding; nor does it disclose producing an executable file. But the process of creating object files or modules and for resolving incompatibility of symbol references called from external program strongly suggests the process of binding. It is a well-known concept in the art of compiler that a linker is a module to bind all files generated from a compilation/assembling process into one final program object; and in so doing, the linker has to resolve references from a symbol table or relocation instructions or external references. And it would have been obvious for one skill in the art to implement the attribute associating process from '516 to achieve the binding of objects as claimed in the instant claims in order to create the final executable for which all the attribute and symbol declaration have been generated because incompatibility checking of symbols is a necessary if not indispensable process for objects binding during the final translation into the executable code such as understood by well-known practices.

Nor does '516 explicitly recite 'language statements include declarations defining attribute information for a symbol reference or symbol definition'. As mentioned above, the resolving symbol dependency/reference or address relocating being done at linking time is a well-known concept. The providing or inserting of additional attribute information cannot be done by the linker itself unless it is explicitly claimed so. The '516 claims recite user's defined

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attribute information via a command is suggestive that a developer is interfacing with the symbol reference resolving process in some way to enable such resolution. Common knowledge accepts that a compilation process creates a symbol table from the constructs parsed from a program source and the step of variable/symbol reference resolving using such table is expected from a linker without interaction with any form of outside input when the compiled code is submitted for conversion into a final object file. There is no explicit reciting in '516 that such interaction with the outside is performed during the implicit symbol resolving process. In view of well-known concepts, the most reasonable interpretation is that such user defined attribute information is done prior to such linking process because interacting dynamically with the linking process for inserting command instructions would have been unreasonably stretching and would probably demand undue experimentation. Hence, in case such user defined command is not already a language statement or instruction, it would have been obvious for one skill in the art to implement such '516 user defined attribute information as a program instruction/statement declaring such attribute information because by so declaring at a program source level, the declared constructs can be set for use by the linking process, i.e. they can be parsed by the compiler into the likes of symbol table or tree with which the resolution by a linker can operate; and also because that would provide programmers with better flexibility and control so to enable, influence and improve the symbol reference resolution as suggested in '516 claims.

Response to Arguments

4. Applicant's arguments filed 3/08/2004 have been fully considered but they are not persuasive.

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Applicant has submitted that instant claims 1, 12, and 23 require that the attribute information in the object module is derived from the language statements declaring the attribute; and that defining attribute information for a symbol reference is being made available when binding object modules into a program object (Appl. Rmrks, pg. 2, 2nd para). The obviousness as to why attribute information associated with symbol reference or definition is used for linking has been addressed in the above rejection. And the rationale as to why it would have been obvious to implement the user defined command as user-defined language statements declaring attribute information for the linking process -- when it is well-known that such linking operates with such symbol reference or definition created in a symbol table or tree-- has been addressed in the rejection above. Besides, the user's defined command as claimed in '516 does not preclude that such command can be a program instruction. The most reasonable interpretation has been used and the rationale based thereon is set forth from above.

Hence, the double patenting rejection will stand as is.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan A Vu whose telephone number is (703)305-7207. The examiner can normally be reached on 8AM-4:30PM/Mon-Fri.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 872-9306 (for formal communications intended for entry)

or: (703) 746-8734 (for informal or draft communications, please consult Examiner before using this number)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA. , 22202. 4th Floor(Receptionist).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VAT
May 14, 2004

A handwritten signature in black ink, appearing to read 'TODD INGBERG', with a long horizontal line extending to the right.

**TODD INGBERG
PRIMARY EXAMINER**